Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
WHIFFLETREE CORPORATION INC.	)	WT Docket No. 12-176
	)	
Request for Waiver of Part 80 to Allow Certification and Use of Seareka Maritime Survivor Locating Device Operating on Frequency 869 MHz	)	

ORDER

Adopted: March 22, 2013 **Released: March 25, 2013**

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction*. On April 30, 2012, Whiffletree Corporation Inc. (Whiffletree), on behalf of Seareka, filed a request for waiver of Section 80.1061 of the Commission's Rules[1] to permit equipment certification and use of Seareka's Maritime Survivor Locating Device (MSLD).[2] For the reasons set forth below, we deny Whiffletree's request for waiver.

2. *Background*. MSLDs are intended for use by persons at risk of falling into the water such as mariners and workers on marine installations or docks.[3] They can be worn on or as part of a garment or life jacket, and are intended to facilitate the rescue of personnel in the vicinity of their vessel or structure so that immediate assistance can be rendered without a time-consuming and expensive search and rescue operation. The Commission's Rules do not currently permit certification or use of MSLDs.[4] Consequently, MSLDs have been authorized by way of waiver of Section 80.1061, which authorizes Emergency Position Indicating Radio Beacons (EPIRBs).[5] MSLDs differ from EPIRBs in that EPIRBs transmit a digital signal on 406.0-406.1 MHz that is detected by the search and rescue satellite-aided tracking (SARSAT)[6] system operated by the National Oceanic and Atmospheric Administration. MSLDs do not meet all the requirements in Section 80.1061 because, in light of their narrower focus, MSLDs do not operate on a frequency monitored by COSPAS-SARSAT, and do not transmit with as much power or

[1] 47 C.F.R. § 80.1061.

[2] Letter to the Federal Communications Commission from George E. Lariviere, Vice President, Whiffletree Corporation Inc., dated April 30, 2012 (Waiver Request).

[3] MSLDs have sometimes been referred to as "man-overboard" devices. *See*, *e.g.*, Wireless Telecommunications Bureau Clarifies that Certain 121.5 MHz Devices Are Permitted Despite Termination of Satellite Processing of 121.5 MHz Distress Signals, *Public Notice*, 24 FCC Rcd 8483, 8483 (WTB MD 2009).

[4] *See* Petition for Rulemaking to Amend Part 95 of the Commission's Rules to Provide for Certain Personal Radio Service Devices, RM-11667 (filed June 20, 2012) (proposing to amend the rules to, *inter alia*, authorize MSLDs).

[5] *See* David Marshall, *Letter*, 13 FCC Rcd 23688, 23688-89 (WTB PSPWD 1998); Letter dated August 4, 2000 from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to Cal Havens, ACR Electronics; Briar Tek Incorporated, *Order*, 17 FCC Rcd 2204 (WTB PSPWD 2002); McMurdo Limited, *Order*, 17 FCC Rcd 7999 (WTB PSPWD 2002); Briar Tek Incorporated, *Order*, 21 FCC Rcd 11979 (WTB MD 2006).

[6] SARSAT is part of the international COSPAS-SARSAT system, a cooperative development of the United States, Russia, Canada, and France. COSPAS is a Russian acronym that translates as "Space System for the Search of Vessels in Distress."

for as long as EPIRBs. Instead, MSLDs transmit on frequencies that are received on a device monitored by personnel at the MSLD-wearer's vessel or facility.

3. Seareka's MSLD operates on frequency 869.40-869.65 MHz. Whiffletree states that the system is currently used for marine rescue in Europe and Asia and believes that it will enhance marine safety in the United States by improving the efficiency of search and rescue operations.[7] In the United States, however, frequency 869.40-869.65 MHz is used for cellular telephone service.[8] Whiffletree argues that using a different frequency in the United States would have a negative impact by increasing production costs, and impairing rescue efforts by reducing the number of vessels that receive the signal.[9] It also argues that the Seareka system is unlikely to cause interference to cellular communications because the MSLD uses a polite protocol that transmits only when the frequency is quiet, and transmits a short (120 millisecond) low power (500 milliwatts) digital burst.[10]

4. On June 27, 2012, we sought comment on Whiffletree's waiver request.[11] Other than Whiffletree itself, commenters oppose the request.[12]

5. *Discussion.* Section 1.925(b)(3) of the Commission's Rules provides that we may grant a waiver if it is shown that (a) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (b) in light of unique or unusual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.[13] We find that a waiver is not warranted under the circumstances presented.

6. As an initial matter, the Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology have previously stated that a waiver should not be granted merely to accommodate a manufacturer's choice of frequency that is based solely on the frequency being harmonized for operation abroad.[14]

7. Moreover, we are not persuaded that deployment of the Seareka MSLD in the United States will have the safety benefits asserted by Whiffletree. Frequency 869 MHz is heavily used for cellular base station operations throughout the United States including territorial waters and the Gulf of Mexico, with a high probability that the frequency will be in use at any point in time. We agree with the commenters that Seareka's MSLD could cause harmful interference that could disrupt cellular communications, including 911 calls, in coastal areas of the United States and other countries and in the

[7] *See* Waiver Request at 2.

[8] *See* 47 C.F.R. § 22.905(a).

[9] *See* Waiver Request at 2.

[10] *Id.*

[11] *See* Wireless Telecommunications Bureau Seeks Comment on Request for Waiver of Part 80 to Allow Certification and Use of Seareka Maritime Survivor Locating Device Operating on Frequency 869 MHz, *Public Notice*, WT Docket No. 12-176, 27 FCC Rcd 7176 (WTB MD 2012).

[12] We received three comments and two reply comments. *See* Comments of Verizon Wireless dated July 27, 2012, Comments of Sprint Nextel Corporation dated July 27, 2012, Comments of AT&T dated July 27, 2012, Reply Comments of CTIA – The Wireless Association dated August 13, 2012, and Response of Whiffletree Corporation and Seareka Maritime Survivor Locating Device (MSLD) dated August 13, 2012.

[13] 47 C.F.R. § 1.925(b)(3); *see also* WAIT Radio v FCC, 418 F. 2d 1153, 1159 (D.C. Cir. 1969).

[14] *See* ReconRobotics, Inc., *Order on Reconsideration*, 26 FCC Rcd 5895, 5898 ¶ 10 (WTB/PSHSB/OET 2011) (citing Terry Mahn, Esq., *Letter*, 21 FCC Rcd 14409 (WTB MD 2006)).

Gulf of Mexico.[15] Even 500 milliwatts is many times more power than the Commission permits for Part 15 unlicensed devices that have been found to be compatible with cellular operations.[16]

8. Conversely, we are concerned that interference from cellular operations could make the Seareka device ineffective on any body of water within range of these base station operations. If the device transmits only when the frequency is quiet, there is a significant chance that a distress alert will not be transmitted, or if transmitted will not be detected by the MSLD-wearer's vessel or facility, due to cellular traffic on the frequency.[17] We therefore deny the waiver request.

9. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(i) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the Request for Waiver filed by Whiffletree Corporation Inc. on behalf of Seareka on April 30, 2012, IS DENIED.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

[15] *See* AT&T comments at 10; Sprint comments at 4; Verizon Wireless comments at 7.

[16] *See* 47 C.F.R. §§ 15.209. 15.231.

[17] Verizon Wireless comments at 4.